

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PACIFICARE OF WASHINGTON, INC.,

Plaintiff,

v.

MIKE LEAVITT, in his capacity as Secretary
of the United States Department of Health
and Human Services,

Defendant.

Case No. C05-0059 RBL

THIRD AMENDED STIPULATION
AND ORDER ESTABLISHING
BRIEFING SCHEDULE

On January 13, 2005, Plaintiff Pacificare of Washington, Inc. ("PacifiCare") filed this action appealing the decision of the Secretary of the Department of Health and Human Services (the "Secretary") dated November 18, 2004 allowing coverage of certain medical care provided to Bobby Atkins pursuant to 42 U.S.C. § 405(g) and 42 U.S.C. § 1395w-22(5).

The parties are in agreement that the above-entitled case, as presently pled constitutes "an action for review on an administrative record" within the meaning of Rule 26(a)(1)(E)(i), Fed. R. Civ. P., and therefore exempt from the requirements of Rule 26(a) Fed. R. Civ. P. regarding "lay down" discovery, and Rule 26(f), Fed. R. Civ. P., regarding participation in a discovery conference and formulation of a discovery plan.

On March 21, 2005, this Court entered an Order vacating the portion of the February 14, 2005 Order requiring a Joint Status Report.

1 On June 14, 2005 the Court entered an Order establishing a briefing schedule for the parties in this case
2 to file cross-motions for summary judgment. This Order envisaged that the parties would file their briefs only
3 after mediation efforts in a related case (Atkins v. Pacificare, 04-cv-5889-RBL) had been completed, as
4 settlement of the related case probably would result in the settlement of this case. Unfortunately, the parties
5 in Atkins v. Pacificare were unable to settle the matter at the mediation session. Therefore, counsel for the
6 parties in this case have conferred and agree that it would be in the interests of justice for their briefing
7 schedule to be continued for two weeks to provide them with an adequate opportunity to prepare their
8 respective cross-motions for summary judgment in this case. They also need to correct certain typographical
9 errors in an earlier scheduling order filed with the Court.
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11 Accordingly, counsel for the parties in this case have reached the following agreement for an amended
12 schedule for the briefing and submission of cross-motions for summary judgment and do hereby stipulate that
13 the Court may make and enter an Order providing that:

14 1. Defendant shall file and serve its motion for summary judgment and supporting memorandum
15 on or before August 19, 2005 (not to exceed 40 pages);

16 2. Plaintiff shall file its memorandum in opposition to Defendant's motion for summary judgment
17 and any cross-motion for summary judgment no later than Monday, September 19, 2005 (not to exceed 40
18 pages);

19 3. Defendant shall file any reply memorandum and its opposition to any cross-motion for summary
20 judgment filed by Plaintiff no later than Friday, October 7, 2005 (not to exceed 24 pages);

21 4. Plaintiff shall file any reply memorandum by no later than Friday, October 21, 2005 (not to
22 exceed 24 pages);

23 5. Both Defendant's motion for summary judgment and any cross-motion for summary judgment
24 filed by Plaintiff shall be noted on Court's motion calendar for October 21, 2005.
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1 **SO STIPULATED**

2 DATED this 3rd day of August, 2005.

3 LANE POWELL PC

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5 By s/Barbara J. Duffy
6 Barbara J. Duffy, WSBA No. 18885
7 Attorneys for Plaintiff

8 JOHN MCKAY
9 United States Attorney

10 By s/Peter Winn
11 Peter Winn, WSBA No. 34701
12 Assistant United States Attorney
13 Attorneys for Defendant

14 **IT IS SO ORDERED**

15 DATED this 8th day of August, 2005.

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17 RONALD B. LEIGHTON
18 UNITED STATES DISTRICT JUDGE
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